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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ROSEIAN VI, LLC d/b/a VISTA VENTANA, a California Limited Liability Company, Plaintiff, v. CERTAIN UNDERWRITERS AT LLOYD'S, LONDON SUBSCRIBING TO POLICY NO. ABLD034069, and POLICY NO. TMILVAC159386, Defendant.	CASE NUMBER: **COMPLAINT** **&** **DEMAND FOR JURY TRIAL**

Plaintiff, Roseian VI, LLC d/b/a Vista Ventana is informed and believes, and on that basis alleges as follows:

NATURE OF ACTION

1. This is an action by Plaintiff, Roseian VI, LLC d/b/a Vista Ventana ("Roseian" or "Plaintiff"), for damages as a result of Defendant, Certain Underwriters at Lloyd's, London Subscribing to Policy No. ABLD034069 and Policy No. TMILVAC159386 ("Defendant" or "Lloyd's") breach of contract and bad faith in connection with an insurance claim made by Plaintiff arising out of roof damage to its commercial property that occurred on or around September 21, 2016.

PARTIES

2. At all times material herein, Roseian owned 11220 Palm Drive, Desert Hot Springs, CA 92240. Roseian is a California Limited Liability Company having its principle place of business in Tustin, California.

3. At all times material herein, Defendant Certain Underwriters of Lloyd's London are foreign insurance syndicates engaged in the business of underwriting and issuing property and casualty insurance policies in the State of California.

JURISDICTION AND VENUE

1. This Court has jurisdiction over the entire action pursuant to 28 U.S.C. § 1332 by virtue of the fact that this is a civil action wherein the matter in controversy, exclusive of interest and costs, exceeds $75,000 and there is diversity of citizenship between the parties.

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) as California is the state where a substantial part of the events or omissions giving rise to this claim occurred and is where property that is the subject of this action is situated.

FACTUAL ALLEGATIONS

3. Plaintiff owned the property located at 11220 Palm Drive, Desert Hot Springs, CA 92240 (the "Insured Property").

4. Plaintiff issued a lease to 11220 Palm DHS, LLC ("Palm DHS") on June 2, 2016 (the "Lease") for the Insured Property, with a term of June 16, 2016 to June 14, 2017 (see attached Exhibit "1").

5. The Lease required Palm DHS to carry property insurance sufficient to cover the replacement cost of the Insured Property, and to name the Plaintiff as an additional insured (see Exhibit "1", page 3).

6. Defendant issued Commercial Property Insurance Policy Number ABLD034069 with a policy period of June 16, 2016 to October 16, 2016 ("Policy A") to cover the Insured Property. A true and certified copy of the policy is attached hereto as "Exhibit 2."

7. Lloyd's also issued Commercial Property Insurance Policy Number TMILVAC159386 with a policy period of June 16, 2016 to October 16, 2016 ("Policy T"). A true and certified copy of the policy is attached hereto as "Exhibit 3".

8. Roseian is an additional named insured under both Policy A and Policy T (collectively the "Policies"), as evidenced by the "Evidence of Property Insurance" attached hereto as Exhibit "4".

9. Under the Policies, Lloyd's agreed to insure accidental or direct physical loss or damage to the Insured Property caused by windstorm.

10. On or about September 21, 2016, while the Policies were in full force and effect, Roseian suffered direct physical loss and damage to the Insured Property caused by a windstorm (the "Loss").

11. Jonathan Rusin of 3rd Generation Insurance Agency notified Tapco Underwriters, Inc. ("Tapco"), an agent of Lloyd's, of the Loss and submitted a claim, Number 24309, to Lloyd's for insurance benefits due under Policy A for the Loss.

12. Rusin notified Tapco, an agent of Lloyd's, of the Loss and submitted a claim, Number 2902120, to Lloyd's for insurance benefits due under Policy T for the Loss.

13. On October 3, 2016 Tapco sent a receipt of the loss to Rusin, referring him to Synergy Adjusting Corporation ("Synergy"), the third party administrator appointed to handle Claim Number 24309 under Policy A.

14. On September 22, 2016 Tapco sent a receipt of the loss to Rusin, referring him to Crawford & Company ('Crawford"), the third party administrator appointed to handle Claim Number 2902120 under Policy T.

15. On December 28, 2016 Synergy sent a letter advising that Lloyd's had denied Claim Number 24309 under Policy A. (See Exhibit "5").

16. On December 19, 2016 Crawford sent a letter advising that Lloyd's had denied Claim Number 2902120 under Policy T. (See Exhibit "6").

17. All conditions required by the Policies of the named insured have been substantially performed.

18. Although all conditions precedent to the right to recovery under the Policies have been substantially performed, Lloyd's has failed and refused to pay for all loss and damage to the Insured Property.

19. As a proximate result of the breach of contract by Lloyd's, Plaintiff has suffered legally compensable damages, including, but not limited to, unpaid contractual policy benefits, interest on contract amounts owed, other out-of-pocket expenses and consequential damages, in a

sum that is expected to exceed $75,000.00. The exact amount of damages will be proven at time of trial.

FIRST CAUSE OF ACTION

BREACH OF CONTRACT

20. Plaintiff re-alleges and incorporate herein by reference the allegations contained in the preceding paragraphs of this complaint, as though fully set forth herein.

21. Plaintiff paid consideration in the form of premiums and has faithfully performed all obligations required to be performed by it under the terms of the insurance contract, except to the extent performance may have been excused by, among other things, Lloyd's bad faith conduct and breach of the insurance policy.

22. Plaintiff's property was insured under two valid commercial property insurance policy, # ABLD034069 and #TMILVAC159386, issued by Lloyd's, which were in effect on September 21, 2016 when the Loss occurred.

23. Lloyd's breached the terms of the contract by failing to fully pay monies due under the contract and by forcing Plaintiff to institute this litigation.

24. As a direct, proximate and legal result of Lloyd's breach(es) of the contract, Plaintiff has been, and continues to be, damaged in an amount in excess of the jurisdictional limits of this Court, including but not limited to: The loss of benefits due under the contract, consequential damages including interest on monies Plaintiff could and should have received promptly, but which it did not receive in a timely fashion as a result of Lloyd's breach of contract, and other fees, expenses, and costs to be proven at trial.

25. Plaintiff has also sustained other losses as a direct, proximate, and legal result of Lloyd's conduct, in an amount to be proven at trial.

SECOND CAUSE OF ACTION

BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

26. Plaintiff re-allege and incorporates herein by reference the allegations contained in the preceding paragraphs of this complaint, as though fully set forth herein.

27. The Policies identified in this action contained an implied covenant of good faith and fair dealing, whereby Lloyd's agreed to perform its obligations under the Policy in good faith, to deal fairly with Plaintiff, and not to unreasonably deprive it of its rights.

28. Lloyd's tortuously breached the implied covenant of good faith and fair dealing arising from the insurance contract by unreasonably denying to fully pay for Plaintiff's covered loss.

29. Despite the demand that all owed monies be paid, Lloyd's refused and continues to engage in unlawful insurance practices and misrepresentations. Such bad faith conduct constitutes a continuing tort which is causing Plaintiff continued damages.

30. Lloyd's engaged and continues to engage in a course of conduct to further its own economic interests in violation of its obligations under the Policies. This conduct includes, but is not limited to the conduct alleged in the complaint and the following:

a) Grossly mischaracterizing exclusions incorporated into the insurance policy it drafted;

b) Failing to examine and question its own consultants to assure their opinions were based on all relevant and available evidence;

c) Failing to properly and fully investigate each claim;

d) Failing to evaluate each claim objectively;

e) Failing to treat the Plaintiff's interests with equal regard as its own;

f) Failing to objectively evaluate each claim based on all available evidence rather than evidence it believed supported its own position;

g) Using unduly restrictive and unreasonable interpretations of the policy as an excuse for denying payment of benefits owed under the Policies;

h) Using improper standards to adjust each claim;

i) Not attempting in good faith to effectuate a prompt, fair and equitable settlement of each claim;

j) Compelling Plaintiff to institute litigation to recover amounts due under the Policies;

k) Deliberately denying benefits that Lloyd's knew were owed under the Policies in conscious disregard of the Plaintiff's known rights and established California case law;

l) Committing promissory fraud by issuing two policies which promised benefits that Lloyd's never intended to provide; and

m) Other acts or omissions of which Plaintiff is presently unaware and which will be shown according to proof at the time of trial.

31. Without any reasonable basis for doing so, and with full knowledge and/or conscious disregard of the consequences, Lloyd's has failed to and refused to act in good faith or act fairly toward Plaintiff, and Lloyd's has, in bad faith, failed and refused to perform its obligations under the insurance policies, and under the laws of the State of California.

32. As a direct result of its breach of contract and breach of implied covenant of good faith and fair dealing, Lloyd's has waived and/or are estopped from asserting any right to contest either coverage or the amount of benefits claimed, or to be claimed, by Plaintiff.

33. As a proximate result of the wrongful and tortious conduct of Lloyd's and its representatives, Plaintiff has suffered legally compensable damages in amounts to be shown at the

time of trial, including, but not limited to, loss of contract benefits, interest thereon, and consequential damages.

34. As a direct and proximate result of the conduct of Lloyd's and its representatives, Plaintiff has been required to engage the services of legal counsel and as such, have incurred, and will continue to incur, costs and attorneys' fees for an amount to be determined according to proof. Plaintiff claims these fees as a distinct item of damages pursuant to *Brandt v. Superior Court,* 37 Cal.3d 813 (1985).

35. The conduct of Lloyd's described above was part of a long-established pattern and practice designed to force claimants to accept less, or no, policy benefits, than they would otherwise be entitled to receive under the terms of their policies, while unfairly minimizing the financial exposure and risk of Lloyd's.

36. Plaintiff is informed and believe, and thereon alleges, that prior to its loss, Lloyd's instituted various internal programs which were designed to increase profitability by unfairly minimizing the amounts paid to claimants, if any, lowering combined loss ratio.

37. Plaintiff is further informed and believess, and thereon alleges, that Lloyd's instituted various corporate programs and policies which are designed to cause such extensive and unreasonable delays that policyholders eventually become exhausted and overwhelmed, and as such, are more inclined to undermine their contractual rights to pursue full payment of policy benefits that they would otherwise be entitled to recover, and instead, be obliged to accept policy benefits that are significantly below what they should be entitled to recover for their loss.

38. The acts and omissions of Lloyd's and its representatives described above were part of the established corporate practices and procedures of Lloyd's and were directed, approved or ratified by individuals in management positions.

39. In carrying out the actions and inactions described in this Complaint, Lloyd's and its representatives acted intentionally, with a conscious disregard of the known rights of Plaintiff, and did so in a fraudulent and oppressive manner, all of which warrants the imposition of punitive damages under the guidelines of California Civil Code section 3294 in an amount sufficient to punish and deter Defendant from engaging in similar conduct in the future.

THIRD CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES

40. Plaintiff re-alleges and incorporates herein by reference the allegations contained in the preceding paragraphs of this complaint, as though fully set forth herein.

41. The conduct of Lloyd's, as set forth in the allegations in this complaint, constitutes unlawful, unfair, and/or fraudulent business practices under California Business & Professional Code section 17200 *et seq*.

42. Lloyd's unlawful conduct includes, but is not limited to, violations of California Insurance Code section 790.03(b), and numerous other federal and state statutes, laws, and regulations.

43. Lloyd's unfair conduct in violation of California Business & Professions Code section 17200 *et seq*. includes, but is not limited to, failing to promptly pay the full benefits due under the insurance policies and engaging in a course of conduct to further its own economic interests in violation of its obligations to its insureds.

44. Lloyd's fraudulent conduct in violation of California Business & Professions Code section 17200 *et seq*. includes, but is not limited to, grossly mischaracterizing exclusions incorporated into the insurance policies it drafted.

45. Plaintiff requests that this court order that the Lloyd's be required to disgorge profits it has wrongfully obtained through the use of these unlawful, unfair, and/or fraudulent practices, provide restitution, and that an injunction be issued to correct the wrongful conduct and business practices alleged in this complaint.

PRAYER FOR DAMAGES

WHEREFORE, Plaintiff prays for damages and other judicial relief as follows:

1. For general, compensatory damages, plus prejudgment interest and other damages according to proof;
2. For special and consequential damages;
3. For punitive and exemplary damages according to proof;
4. For restitutionary disgorgement of all profits Defendant obtained as a result of unlawful, unfair, and/or fraudulent business practices;
5. For an appropriate injunction;
6. For costs of suit herein;
7. For pre-judgment interest as provided for by applicable law; and
8. For such further relief as the Court may deem just and proper.

DATED: April 14, 2017

By: ______________________

Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial for all issues of fact properly triable by jury.

DATED: April 14, 2017

By: ______________________

Attorney for Plaintiff